

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	MEMORANDUM
)	AND ORDER
WILLIE CURRY,)	
)	
Defendant.)	

4:10CR3123

**MEMORANDUM
AND ORDER**

This matter is before the court on Defendant's notice of appeal (filing [94](#)) and on the recent memo from the clerk's office inquiring whether Defendant may proceed in forma pauperis on appeal (filing [95](#)). In response to the Clerk's inquiry, the court finds that the appeal is not taken in good faith. Thus, Defendant may not proceed in forma pauperis on appeal. See [Fed. R. App. P. 24\(a\)\(3\)](#).

Defendant pleaded guilty to possession of cocaine with intent to distribute and I sentenced him to 60 months in prison on October 19, 2011. (Filing [63](#).) Defendant waived his right to appeal and waived his right to file a § 2255 motion with the exception that he was permitted to seek postconviction relief based upon ineffective assistance of counsel.¹ (Filing [49](#) at CM/EF pp. 6-7.)

On February 16, 2012, Defendant filed a motion to vacate under [28 U.S.C. § 2255](#). (Filing [73](#).) I denied the motion and Defendant filed a motion for certificate of appealability along with a notice of appeal. (Filings [78](#), [79](#), [81](#), and [82](#).) I declined to issue a certificate of appealability, but granted Defendant leave to proceed in forma pauperis on appeal. (Filing [85](#) at CM/ECF p. 2.) On July 27, 2012, the Eighth Circuit denied Defendant's application for certificate of appealability and dismissed his appeal. (Filing [88](#).)

¹There were also other exceptions but they are not pertinent here.

On January 29, 2013, Defendant filed a motion pursuant to [Federal Rule of Civil Procedure 60\(b\)](#), seeking to reopen his § 2255 proceeding. (Filing [92](#).) I denied the motion (filing [93](#)) and Defendant filed his pending notice of appeal (filing [94](#)). Defendant's Rule 60(b) motion essentially argues that an issue he raised in his motion for certificate of appealability constitutes an extraordinary circumstance sufficient to reopen his § 2255 proceeding. This argument is nothing more than an argument previously raised and considered by this court and the Eighth Circuit.

IT IS ORDERED that:

1. Pursuant to [Fed. R. App. P. 24\(a\)\(3\)\(A\)](#), the court certifies that Defendant's appeal (filing [94](#)) is not taken in good faith.
2. Pursuant to [Fed. R. App. P. 24\(a\)\(4\)\(B\)](#), the clerk of the court shall send a copy of this memorandum and order to Defendant and to the Clerk of the United States Court of Appeals for the Eighth Circuit.

DATED this 14th day of March, 2013.

BY THE COURT:

Richard G. Kopf

Senior United States District Judge

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